

STATE OF VERMONT
PUBLIC SERVICE BOARD

Docket No. 7440

Petition of Entergy Nuclear Vermont Yankee,)
LLC, and Entergy Nuclear Operations, Inc., for)
amendment of their Certificates of Public Good)
and other approvals required under 10 V.S.A.)
§§ 6501-6504 and 30 V.S.A. §§ 231(a), 248 &)
254, for authority to continue after March 21,)
2012, operation of the Vermont Yankee Nuclear)
Power Station, including the storage of spent-)
nuclear fuel)

Order entered: 4/23/2009

ORDER RE: NEC REQUEST FOR EXTENSION

Introduction

By letter dated April 23, 2009, the New England Coalition ("NEC") requests "an extension of time in which to file Surrebuttal Testimony pending resolution of a discovery dispute that exists between NEC and [Entergy Nuclear Operations, Inc. ("Entergy")] regarding Entergy's responses to NEC's Sixth Set of Information Requests." ¹ In its letter, NEC asserts that Entergy's discovery responses contain "a myriad of objections," many of which NEC believes to be unwarranted. NEC also contends that those responses that Entergy has provided are "cursory and inadequate." NEC represents that it has initiated a dialogue with Entergy to attempt to resolve this discovery dispute, and "requests that the Board postpone the deadline for filing Surrebuttal Testimony until April 28, and further to allow NEC to submit supplemental Surrebuttal Testimony upon resolution of this discovery dispute, should it remain unresolved subsequent to April 28."

1. The Board received NEC's letter by e-mail on April 23; the letter indicates that it has also been sent to the Board via first-class mail.

On April 23, 2009, both the Vermont Department of Public Service ("Department") and Entergy submitted responses to NEC's request.² The Department opposes the request because, it asserts, delaying NEC's surrebuttal testimony to April 28 could well result in a delay to the remaining schedule; such delay would create a number of logistical problems, according to the Department. The Department would, however, allow NEC to supplement its surrebuttal testimony "if it turns out that Entergy has improperly withheld information in its responses to NEC's last round of discovery." The Department further contends that such supplemental testimony "must be directly derived from information that NEC did not have access to prior to April 24," and not testimony that NEC could have included in its initial submittal.

Entergy asserts that "NEC's request is unwarranted and must be rejected." Entergy contends that "NEC has failed to identify with any specificity the discovery responses it believes are deficient," and has failed to provide Entergy the opportunity to attempt to resolve NEC's discovery concerns. Entergy claims that NEC's sixth set of discovery requests is voluminous, "poorly-formed and disorganized," and that certain of NEC's discovery requests were inappropriately directed at Entergy's February 11, 2009, testimony given that the deadline for discovery on that testimony has passed. Entergy also asserts that NEC has a "pattern and practice of raising last-minute and baseless discovery disputes," and requests for time extensions.

Discussion and Conclusion

We observe, first, that it is premature for us to grant an extension based on the discovery dispute because that dispute is not properly before us.

Second, we find NEC's request for an extension to be inadequately supported. NEC fails to articulate any reason why it needs the requested four additional days to file its surrebuttal testimony if it is also given the opportunity – as it requests – to supplement the testimony based on the resolution of the discovery dispute.

For these reasons, we conclude that we should deny NEC's request. However, given that our ruling comes only one day before the deadline for NEC's surrebuttal testimony, we will grant NEC until Monday, April 27, 2009, to file its surrebuttal testimony. After its discovery dispute

2. The Department and Entergy each submitted their responses by e-mail.

with Entergy is resolved, NEC may if warranted file a properly supported motion for the opportunity to supplement its surrebuttal testimony to address additional discovery responses that it receives.

SO ORDERED.

Dated at Montpelier, Vermont, this 23rd day of April, 2009.

s/James Volz)

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PUBLIC SERVICE

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s/David C. Coen)

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BOARD

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OF VERMONT

s/John D. Burke)

OFFICE OF THE CLERK

FILED: April 23, 2009

ATTEST: s/Judith C. Whitney
Deputy Clerk of the Board

NOTICE TO READERS: This decision is subject to revision of technical errors. Readers are requested to notify the Clerk of the Board (by e-mail, telephone, or in writing) of any apparent errors, in order that any necessary corrections may be made. (E-mail address: psb.clerk@state.vt.us)